

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

LUIS HERNANDEZ

PLAINTIFF

v.

Civil No. 05-5194

SHERIFF KEITH FERGUSON;
and DR. NEIL MULLINS

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

This civil rights action was filed by the plaintiff pursuant to 42 U.S.C. § 1983 on December 2, 2005. The plaintiff proceeds pro se and in forma pauperis.

On April 13, 2007, defendants filed a motion to compel answers to discovery requests (Doc. 26). The motion to compel was granted by order entered on April 20, 2007 (Doc. 29). Plaintiff was given until May 11, 2007, to provide defendants with the discovery responses.

On May 16, 2007, defendants filed a motion to dismiss (Doc. 30). In the motion to dismiss, defendants state they have not received the discovery responses from the plaintiff or any communication from him regarding his discovery responses. Plaintiff has not requested an extension of time to provide the discovery responses. Plaintiff has not communicated with the court in anyway. The court's order has not been returned as undeliverable.

I therefore recommend that the defendants' motion to dismiss (Doc. 30) be granted and that this action be dismissed with prejudice based on the plaintiff's failure to comply with the court's order and his failure to prosecute this action. Fed. R. Civ. P. 41(b).

The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are

reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 23rd day of May 2007.

/s/ *J. Marschewski*

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE